

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY DIXON and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 99-1816; Submitted on the Record;
Issued August 16, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a permanent impairment of her upper extremities entitling her to a schedule award.

Appellant filed an occupational disease claim on April 17, 1989 alleging that she developed swelling and pain in her hands as a result of repetitive duties as a letter sorter machine clerk. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral tendinitis, which was later updated to include right carpal tunnel syndrome. The Office also approved appellant's carpal tunnel release surgery performed on August 9, 1993. Appellant stopped work on April 21, 1989 and worked intermittently until she returned on December 6, 1993 following surgery, with continued periods of disability.

On September 1, 1995 appellant filed a claim for a schedule award. In support of her claim, appellant submitted a report dated January 14, 1997, from Dr. Earl Rozas, a Board-certified orthopedic surgeon, who calculated appellant's permanent impairment at five percent of each upper extremity. He indicated that appellant had continued to have difficulty secondary to repetitive use syndrome and set forth her restrictions of lifting no more than five pounds, no keying, handling or working flats.

The Office subsequently referred this case along with a statement of accepted facts, to Dr. Donald Faust, a Board-certified orthopedic surgeon, for a second opinion examination to determine the degree of appellant's permanent impairment according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).¹

In an October 9, 1998 report, Dr. Faust reviewed appellant's medical history and stated that she had reached maximum medical improvement in June 1995. He indicated that at the time of his evaluation, appellant continued her duties of casing mail approximately eight hours a day,

¹ A.M.A., *Guides* (4th ed. rev. 1993).

although with pain. Dr. Faust noted that while Dr. Rozas assessed appellant with five percent impairment to each upper extremity, he opined that this rating was based on pain, as electrical tests did not confirm his diagnosis. Dr. Faust provided measurements of the upper extremities and found that appellant had no impairment. On examination, he found no atrophy, ankylosis or sensory changes. Dr. Faust reported that appellant's elbows extended to 0 and flexed to 135 degrees.² He found that appellant's shoulders abducted 180 degrees, externally rotated 90 degrees and internally rotated 80 degrees. Dr. Faust reported findings on range of motion, noting that appellant's thumb had an interphalangeal joint flexion and extension of 0 to 60 degrees.³ Appellant's metacarpophalangeal joint flexion was measured at -20 degrees⁴ and her extension at -80 degrees.⁵ With regard to appellant's fingers, he reported that her distal interphalangeal joint had flexion extension of 0 to 80 degrees;⁶ her proximal interphalangeal joint had flexion extension of 0 to 105 degrees⁷ and metacarpophalangeal joint had flexion of 0 degrees and extension of 90 degrees.⁸ Dr. Faust reported that appellant's wrist had dorsiflexion of 0 to 60 degrees; palmar flexion of 0 to 90 degrees; radial deviation of 0 to 20 degrees⁹ and ulnar deviation of 0 to 20 degrees.¹⁰ He concluded that appellant had no impairment. Dr. Faust reported that appellant's pain tolerance appeared to be quite low and that she appeared to be attempting to bias the results of the examination. He stated that appellant might have previously developed tendinitis, but that it had not been apparent.

The Office forwarded the case record to its medical adviser. On November 16, 1998 the Office medical adviser reviewed Dr. Faust's findings and determined that his assessment of no impairment of the upper extremities was based on the evidence of record and the fourth edition of the A.M.A., *Guides*.

² In accordance with Figure 31, page 39 of the A.M.A., *Guides*, a measurement for loss of flexion of the elbow of 135 degrees corresponds to a 3 percent impairment.

³ In accordance with Figure 10, page 26 of the A.M.A., *Guides*, a flexion measurement for abnormal motion of the thumb of 0 to 60 degrees represents a 1 percent impairment.

⁴ In accordance with Figure 13, page 27 of the A.M.A., *Guides*, a flexion measurement for abnormal motion of the metacarpophalangeal joint of -20 degrees corresponds to a 4 percent impairment.

⁵ Figure 13, page 27 of the A.M.A., *Guides*, which represents abnormal motion of the metacarpophalangeal joint does not indicate an impairment rating for flexion and extension of 80 degrees.

⁶ Figure 19, page 32 of the A.M.A., *Guides*, which represents abnormal motion of the distal interphalangeal joint does not indicate an impairment rating for flexion and extension of 80 degrees.

⁷ Figure 21, page 33 of the A.M.A., *Guides*, which represents range of motion of the proximal interphalangeal joint does not indicate and impairment rating for flexion and extension range of 105 degrees.

⁸ In accordance with Figure 23, page 34 of the A.M.A., *Guides*, a flexion and extension measurement of 0 to 90 degrees corresponds to a 0 percent impairment rating.

⁹ In accordance with Figure 29 on page 38 of the A.M.A., *Guides*, a 0 to 20 degree radial deviation of the wrist corresponds to a 0 percent impairment rating.

¹⁰ In accordance with Figure 29 on page 38 of the A.M.A., *Guides*, a 0 to 20 degree ulnar deviation of the wrist corresponds to a 2 percent impairment rating.

By decision dated April 6, 1999, the Office denied appellant's claim for a schedule award. It found that the weight of the medical evidence indicated that appellant had not suffered any work-related permanent impairment in the use of functioning of her upper extremities.

The Board finds that this case is not in posture for decision.

Under section 8107 of the Federal Employees' Compensation Act¹¹ and section 10.404 of the implementing federal regulations,¹² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office¹³ and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.¹⁴

In the present case, neither appellant's physician nor the Office referral physician fully explained their conclusion relative to appellant's permanent impairment. Dr. Rozas, appellant's treating physician stated in reports that appellant had continued to have difficulty secondary to repetitive use syndrome and set forth her restrictions of lifting no more than five pounds, no keying, handling or working flats. He did not describe the specific permanent impairments appellant suffered as a result of her accepted injuries. Without any explanation, Dr. Rozas concluded in a January 14, 1997 report that appellant had a five percent permanent disability. Because he failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with the standards adopted by the Office and approved by the Board for evaluating schedule losses, Dr. Rozas' opinion is entitled to little weight.¹⁵

Dr. Faust, the Office referral physician related in his report appellant's history, her diagnosed condition and that he found no atrophy, ankylosis or sensory changes in her upper extremities. He reported his findings on range of motion for each of appellant's affected members, however, Dr. Faust failed to indicate which tables he used to determine that appellant had no impairment, in order to understand his impairment rating. Inasmuch as Dr. Faust's zero percent impairment rating is not fully explained, it is of diminished probative weight.¹⁶ In addition, the Office medical adviser simply agreed with Dr. Faust's impairment finding without providing any explanation of his own. Accordingly, the Board finds that this case must be remanded for further development.

¹¹ 5 U.S.C. § 8107.

¹² 20 C.F.R. § 10.404.

¹³ A.M.A., *Guides*.

¹⁴ *James A. Sellers*, 43 ECAB 924 (1992).

¹⁵ *Annette M. Dent*, 44 ECAB 403 (1993).

¹⁶ *Paul Evans*, 44 ECAB 646 (1993).

On remand the Office should refer the case record to Dr. Faust or another physician to provide a fully explained medical opinion pursuant to the A.M.A., *Guides* (4th ed. 1993). After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated April 6, 1999 is set aside and the case remanded for further action in conformance with this decision.

Dated, Washington, D.C.
August 16, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member